

FIRST REGULAR SESSION

HOUSE BILL NO. 887

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES FREDERICK (Sponsor) AND LICHTENEGGER (Co-sponsor).

2008L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 334.010 and 334.260, RSMo, and to enact in lieu thereof fourteen new sections relating to midwifery, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 334.010 and 334.260, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 334.010, 334.1200, 334.1202, 334.1204, 334.1206, 334.1208, 334.1210, 334.1212, 334.1214, 334.1216, 334.1218, 334.1220, 334.1222, and 334.1224, to read as follows:

334.010. 1. It shall be unlawful for any person not now a registered physician within the meaning of the law to practice medicine or surgery in any of its departments, to engage in the practice of medicine across state lines or to profess to cure and attempt to treat the sick and others afflicted with bodily or mental infirmities, [or engage in the practice of midwifery in this state,] except as herein provided.

2. For the purposes of this chapter, the "practice of medicine across state lines" shall mean:

(1) The rendering of a written or otherwise documented medical opinion concerning the diagnosis or treatment of a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic or other means from within this state to such physician or physician's agent; or

(2) The rendering of treatment to a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic or other means from within this state to such physician or physician's agent.

3. A physician located outside of this state shall not be required to obtain a license when:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 16 (1) In consultation with a physician licensed to practice medicine in this state; and
17 (2) The physician licensed in this state retains ultimate authority and responsibility for
18 the diagnosis or diagnoses and treatment in the care of the patient located within this state; or
19 (3) Evaluating a patient or rendering an oral, written or otherwise documented medical
20 opinion, or when providing testimony or records for the purpose of any civil or criminal action
21 before any judicial or administrative proceeding of this state or other forum in this state; or
22 (4) Participating in a utilization review pursuant to section 376.1350.

334.1200. 1. As used in sections 334.1200 to 334.1224, the following terms shall mean:

- 2 **mean:**
3 (1) "Antepartum", before birth;
4 (2) "Board", state board of registration for the healing arts;
5 (3) "Client", a person who retains the services of a registered midwife;
6 (4) "Consultation", communication between a registered midwife and a licensed
7 physician for the purpose of receiving and implementing advice regarding the care of a
8 pregnant woman or infant;
9 (5) "Committee", the advisory committee for registered midwives;
10 (6) "Intrapartum", during birth;
11 (7) "Midwife services", the management and care of women in the antepartum,
12 intrapartum, and postpartum period of the maternity cycle;
13 (8) "Postpartum", after birth, but no longer than one hundred twenty days after
14 birth;
15 (9) "Protocol", a defined response to a specific clinical situation providing
16 suggested pathways to be followed by the registered midwife for managing a particular
17 issue or complication;
18 (10) "Referral", the process by which a registered midwife directs a client to a
19 licensed physician. The client and the physician shall determine whether subsequent care
20 shall be provided by the physician, the midwife, or by both the physician and the midwife;
21 (11) "Registered midwife", any person who is registered with the state board of
22 healing arts to provide midwife services;
23 (12) "Transfer of care", the transfer of care of the client to a medical facility or a
24 licensed physician who then assumes the responsibility for the direct care of the client.

334.1202. 1. There is hereby established under the state board of registration for the healing arts the "Advisory Committee for Registered Midwives", which shall guide, advise, make recommendations to, and assist the board in carrying out the provisions of sections 334.1200 to 334.1224.

5 **2. No later than December 31, 2010, the governor shall appoint members to the**
6 **committee with the advice and consent of the senate. The committee shall consist of five**
7 **members, each of whom are United States citizens and who have been residents of this state**
8 **for at least one year immediately preceding their appointment. One of the members shall**
9 **be a public member and four members shall be registered midwives who attend births in**
10 **homes or other out-of-hospital settings; provided that, the first midwife members**
11 **appointed need not be registered at the time of appointment if they become registered in**
12 **accordance with the requirements of sections 334.1200 to 334.1224.**

13 **3. The initial appointments to the committee shall be one member for a term of one**
14 **year, two members for a term of two years, and two members for a term of three years.**
15 **After the initial terms, each member shall serve a three-year term. No member of the**
16 **committee shall serve more than two consecutive three-year terms. The organization of the**
17 **committee shall be established by members of the committee. Upon the death, resignation,**
18 **or removal from office of any member of the committee, the appointment to fill the vacancy**
19 **shall be for the unexpired portion of the term so vacated and shall be made within sixty**
20 **days after the vacancy occurs.**

21 **4. The public member of the committee shall not be a member of any profession**
22 **regulated by this chapter or chapter 335 or the spouse of any such person. The public**
23 **member is subject to the provisions of section 620.132.**

24 **5. Members of the committee shall not be personally liable, either jointly or**
25 **severally, for any act or acts committed in the performance of their official duties as**
26 **committee members. No committee member shall be personally liable for any court costs**
27 **which accrue in any action by or against the committee.**

28 **6. Notwithstanding any other provision of law to the contrary, any appointed**
29 **member of the committee shall receive as compensation an amount established by the**
30 **director of the division of professional registration not to exceed fifty dollars per day for**
31 **committee business plus actual and necessary expenses. The director of the division of**
32 **professional registration shall establish by rule guidelines for payment. All staff for the**
33 **committee shall be provided by the board.**

34 **7. The committee shall hold an open annual meeting at which time it shall elect**
35 **from its membership a chair and secretary. The committee may hold such additional**
36 **meetings as may be required in the performance of its duties, provided that notice of every**
37 **meeting shall be given to each member at least ten days prior to the date of the meeting.**
38 **A quorum of the committee shall consist of a majority of its members.**

39 **8. The committee shall develop and recommend midwifery practice guidelines and**
40 **protocols, including but not limited to:**

41 (1) Identification of which categories of clients are and are not appropriate for
42 home delivery;

43 (2) Which management techniques and interventions are appropriate for a delivery
44 in an out-of-hospital setting.

45 9. No registration activity or other statutory requirements shall become effective
46 until expenditures or personnel are specifically appropriated for the purpose of conducting
47 the business as required to administer sections 334.1200 to 334.1224, and the initial rules
48 have become effective.

334.1204. 1. No person shall hold himself or herself out as a midwife in this state
2 unless such person is registered under sections 334.1200 to 334.1224.

3 2. Nothing in sections 334.1200 to 334.1224 shall be construed to prohibit
4 physicians licensed under this chapter or certified nurse midwives licensed under chapter
5 335 from providing midwife services, so long as such services are lawfully performed under
6 such individual's scope of practice as authorized by law and regulation.

334.1206. 1. The board shall issue certificates of registration to applicants who:

2 (1) Present documentation verifying that the applicant has the practical midwifery
3 services experience through an apprenticeship or other supervisory setting;

4 (2) Present evidence of current certification in adult and neonatal cardiopulmonary
5 resuscitation;

6 (3) Agree to comply with the informed consent requirement under subsection 1 of
7 section 334.1216; and

8 (4) Pay a registration fee set by the board.

9 2. The board shall renew certificates of registration to applicants who:

10 (1) Present evidence of current certification in adult and neonatal cardiopulmonary
11 resuscitation;

12 (2) Pay a renewal fee set by the board not to exceed fifty dollars; and

13 (3) Submit the following data on a form to be promulgated by rule and made
14 available by the board:

15 (a) The number of women to whom care was provided since the date of the
16 previously issued certificate of registration;

17 (b) The number of deliveries performed;

18 (c) The number of perinatal transfers;

19 (d) The number of transfers during labor, delivery, and immediately following
20 birth; and

21 (e) The number of perinatal deaths.

22 **3. Any certificate of registration issued under sections 334.1200 to 334.1224 shall**
23 **expire one year after the date of its issuance. The board may refuse to issue or renew any**
24 **certificate of registration under sections 334.1200 to 334.1224 for one or any combination**
25 **of causes stated in subsection 2 of section 334.1210. The board shall notify the applicant**
26 **in writing of the reasons for the refusal and shall advise the applicant of the applicant's**
27 **right to file a complaint with the administrative hearing commission as provided by**
28 **chapter 621.**

334.1208. Any complaint received by the board concerning a person who is
2 **registered under sections 334.1200 to 334.1224 shall be recorded as received and the date**
3 **received. The board shall investigate all complaints concerning alleged violations of**
4 **sections 334.1200 to 334.1224 or if there are grounds for the suspension, revocation, or**
5 **refusal to issue a certificate of registration. The board may employ investigators who shall**
6 **investigate complaints and make inspections and any inquiries as, in the judgment of the**
7 **board, are appropriate to enforce sections 334.1200 to 334.1224.**

334.1210. 1. The board may refuse to issue or renew any certificate of registration
2 **required under sections 334.1200 to 334.1224 for one or any combination of causes stated**
3 **in subsection 2 of this section. The board shall notify the applicant in writing of the**
4 **reasons for the refusal and shall advise the applicant of his or her right to file a complaint**
5 **with the administrative hearing commission as provided by chapter 621.**

6 **2. The board may cause a complaint to be filed with the administrative hearing**
7 **commission as provided by chapter 621 against any holder of a certificate of registration**
8 **required by sections 334.1200 to 334.1224, or any person who has failed to renew or has**
9 **surrendered his or her certificate of registration for any one or any combination of the**
10 **following causes:**

11 **(1) Use or unlawful possession of any controlled substance, as defined in chapter**
12 **195, or alcoholic beverage to an extent that such use impairs a person's ability to perform**
13 **midwife services, or any violation of the drug laws or regulations of this state, any other**
14 **state, or the federal government;**

15 **(2) The person has been finally adjudicated and found guilty or entered a plea of**
16 **guilty or nolo contendere in a criminal prosecution under the laws of any state or of the**
17 **United States for any offense reasonably related to the qualifications, functions, or duties**
18 **of a registered midwife, for any offense an essential element is fraud, dishonesty, or an act**
19 **of violence, or for any offense involving moral turpitude, whether or not sentence is**
20 **imposed;**

21 **(3) Use of fraud, deception, misrepresentation, or bribery in securing a certificate**
22 **of registration issued under sections 334.1200 to 334.1224;**

23 (4) Obtaining or attempting to obtain any fee, charge, tuition, or other
24 compensation by fraud, deception, or misrepresentation;

25 (5) Incompetence, misconduct, gross negligence, fraud, misrepresentation, or
26 dishonesty in the performance of the functions and duties of a registered midwife;

27 (6) Violation of or assisting or enabling any person to violate any provision of
28 sections 334.1200 to 334.1224 or any lawful regulation adopted under sections 334.1200 to
29 334.1224;

30 (7) Impersonation of any person holding a certificate of registration or allowing any
31 person to use his or her certificate of registration;

32 (8) Disciplinary action against the holder of a certificate of registration granted by
33 another state, territory, federal agency, or country upon grounds for which revocation or
34 suspension is authorized in this state;

35 (9) The person has been adjudged insane or incompetent by a court of competent
36 jurisdiction;

37 (10) Assisting or enabling any person to practice or offer to practice as a registered
38 midwife who is not registered under sections 334.1200 to 334.1224;

39 (11) Issuance of a certificate of registration based upon a material mistake of fact;

40 (12) Violation of any professional trust or confidence;

41 (13) Use of any advertisement or solicitation which is false, misleading, or deceptive
42 to the general public or persons to whom the advertisement or solicitation is primarily
43 directed;

44 (14) Committing unethical conduct as defined by the board; or

45 (15) Engaging in conduct detrimental to the health or safety of either the mother
46 or infant, or both, as determined by the board.

47 3. After the filing of such complaint before the administrative hearing commission,
48 the proceedings shall be conducted in accordance with the provisions of chapter 621. Upon
49 a finding by the administrative hearing commission that the grounds provided in
50 subsection 2 of this section for disciplinary action are met, the board may, singly or in
51 combination:

52 (1) Warn, censure, or place the person named in the complaint on probation on
53 such terms and conditions as the board deems appropriate for a period not to exceed ten
54 years;

55 (2) Suspend the person's certificate of registration for a period not to exceed three
56 years;

57 (3) Revoke the person's certificate of registration;

58 (4) Deny the person's application for a certificate of registration; or

59 (5) Permanently withhold issuance of a certificate of registration.

60 4. An individual whose certificate of registration has been revoked shall wait at
61 least one year from the date of revocation to apply for renewal of the certificate of
62 registration. Renewal shall be at the discretion of the board after compliance with all
63 requirements of sections 334.1200 to 334.1224 relative to the registration of the applicant
64 for the first time.

334.1212. The board may promulgate rules necessary to implement and administer
2 the provisions of sections 334.1200 to 334.1224. Any rule or portion of a rule, as that term
3 is defined in section 536.010, that is created under the authority delegated in this section
4 shall become effective only if it complies with and is subject to all of the provisions of
5 chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
6 nonseverable and if any of the powers vested with the general assembly under chapter 536
7 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
8 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
9 adopted after August 28, 2011, shall be invalid and void.

334.1214. 1. All fees payable under sections 334.1200 to 334.1224 shall be set by the
2 board at a level to produce revenue sufficient to cover but not substantially exceed the cost
3 and expense of administering sections 334.1200 to 334.1224. All such fees shall be collected
4 by the division of professional registration, which shall transmit them to the department
5 of revenue for deposit in the state treasury to the credit of the board of registration for the
6 healing arts fund.

7 2. Upon appropriation by the general assembly, the money in the fund shall be used
8 to administer the provisions of sections 334.1200 to 334.1224.

334.1216. 1. Every registered midwife shall present an informed consent document
2 to each client, which shall include but not be limited to, the following:

3 (1) A statement specifying whether malpractice or other similar liability insurance
4 is maintained by the registered midwife and if maintained, a description of the liability
5 conditions and limits of such insurance, and a description of the limitation on liability by
6 a health care professional under subsection 3 of this section if a transfer to a health care
7 facility becomes necessary;

8 (2) A description of the particular registered midwife's education, training, and
9 qualifications, including but not limited to any high school, university, other
10 postsecondary, or advanced degrees or diplomas;

11 (3) Registration as a registered midwife, including the effective dates of the
12 certificate of registration;

13 **(4) (a) The benefits and risks associated with childbirth in the setting selected by**
14 **the client for clients in general and for the specific client based on her particular situation,**
15 **history, and examination;**

16 **(b) A health history sheet for the particular client, to include past medical, surgical,**
17 **and obstetrical history, and physical examination, nutritional status, and a written**
18 **assessment of risk factors;**

19 **(c) A report of the statewide statistics regarding midwife-attended home or out-of-**
20 **hospital births, including the rates of transfer and reasons for such transfers,**
21 **complications, maternal or fetal deaths, fatal death rates, cesarean sections, and**
22 **comparable statistics for similar health care facility births; and**

23 **(d) A statement that the client understands that a transfer to a health care facility**
24 **may be necessary and that the health care professionals listed in subsection 3 of this section**
25 **are held harmless in the event of such transfer and subsequent care is provided by such**
26 **health care professional;**

27 **(6) A statement notifying the client of complications that would require transfer of**
28 **the client's care to a licensed physician;**

29 **(7) A statement advising the client to see a licensed physician for the purpose of**
30 **prenatal testing;**

31 **(8) A written care plan specific to the client to ensure the continuity of care**
32 **throughout the antepartum, intrapartum, and postpartum periods. The written care plan**
33 **shall incorporate the conditions under which consultation, including the transfer of care**
34 **or transport of the client, may be implemented;**

35 **(9) (a) Documentation of the health care facility to which the client has selected to**
36 **be transferred in the event transfer is deemed necessary and documentation of a transfer**
37 **agreement with such facility; and**

38 **(b) Documentation of the mode of transfer selected by the client in the event**
39 **transfer is deemed necessary and documentation of the agreement by the entity chosen to**
40 **provide such transfer on an urgent basis;**

41

42 **The registered midwife shall notify any health care facility selected by a client of the**
43 **client's selection of such facility and the client's estimated date of delivery within one week**
44 **of determination of the estimated date of confinement (EDC). In addition, the registered**
45 **midwife shall notify the selected health care facility and the entity selected for transfer on**
46 **an urgent basis of the commencement of labor by a client; and**

47 **(10) If telephone communication by land line or reliable cellular source is not**
48 **available at the proposed birthing site, the consent shall list such fact as an additional risk**
49 **factor.**

50 **2. The informed consent document shall be signed and dated by the client, as**
51 **evidence that the document has been received and explained, and kept by the midwife in**
52 **the client's records.**

53 **3. Nothing in sections 334.1200 to 334.1224 shall be construed to apply to a person**
54 **who provides information and support in preparation for labor and delivery and assists**
55 **in the delivery of an infant if that person does not do the following:**

56 **(1) Advertise as a midwife or as a provider of midwife services;**

57 **(2) Accept any form of compensation for midwife services; and**

58 **(3) Use any words, letters, signs, or figures to indicate that the person is a midwife.**

59 **4. No physician, nurse, emergency medical technician, hospital, or agents thereof**
60 **providing emergency medical and obstetrical care or treatment for a woman or infant**
61 **arising during childbirth as a consequence of the care received by a registered midwife**
62 **shall be liable for any civil damages for any act or omission resulting from the rendering**
63 **of such services unless such act or omission was the result of gross negligence or willful**
64 **misconduct on the part of the physician, nurse, emergency medical technician, hospital, or**
65 **agents thereof.**

66 **5. Nothing in sections 334.1200 to 334.1224 shall be construed to prohibit the**
67 **attendance at birth of the mother's choice of family, friends, or other uncompensated labor**
68 **support attendants.**

334.1218. No registered midwife shall be permitted to:

2 **(1) Prescribe drugs or medications;**

3 **(2) Perform any surgical procedures;**

4 **(3) Perform medical inductions or cesarean sections during the delivery of an**
5 **infant;**

6 **(4) Use forceps during the delivery of an infant;**

7 **(5) Perform sonograms;**

8 **(6) Perform vacuum delivery of an infant; or**

9 **(7) Perform or induce an abortion;**

10 **(8) Provide midwife services for multiple births and other high-risk pregnancies,**
11 **as defined by the state board of healing arts.**

334.1220. 1. Every registered midwife shall keep a record of each client served
2 **which shall contain:**

3 **(1) Name, address and telephone number of client;**

4 (2) Informed consent document signed and dated by client and the registered
5 midwife; and

6 (3) Documentation of all consultations, referrals, transfer of care, and emergency
7 transport and care rendered, and all subsequent updates.

8 2. When a birth or stillbirth occurs without a physician in attendance at or
9 immediately after the birth but with a registered midwife in attendance at or immediately
10 after the birth, it shall be the responsibility of the registered midwife to fulfill the reporting
11 requirements of section 210.050, and to prepare and file the certificate of birth as required
12 by section 193.085.

13 3. Every registered midwife shall submit a client summary report for each client
14 to the board. Such summary reports shall be submitted on a biannual basis.

 334.1222. Every registered midwife who provides midwife services for any client
2 shall file with the board a notice of home delivery within thirty days of the birth of the
3 child. The forms for filing the notice of home delivery shall be promulgated by rule and
4 shall include information on the birth and delivery, including but not limited to, whether
5 the delivery resulted in:

6 (1) A live birth;

7 (2) A perinatal transfer during labor, delivery, or immediately following birth; or

8 (3) A perinatal death.

 334.1224. Any person who violates the provisions of sections 334.1200 to 334.1224,
2 or any rule or order under sections 334.1200 to 334.1224 is guilty of a class A misdemeanor.

 [334.260. On August 29, 1959, all persons licensed under the provisions
2 of chapter 334, RSMo 1949, as midwives shall be deemed to be licensed as
3 midwives under this chapter and subject to all the provisions of this chapter.]